REMARKS

Applicant is in receipt of the Office Action mailed September 29, 2005. Claims 1-3, 6, 9-14, and 16 have been amended. Claim 4 has been cancelled. Claims 1-3, 5-16 and 24-31 are pending in the case. Reconsideration of the present case is earnestly requested in light of the following remarks.

Section 102 Rejections

Claims 17-31 were rejected under 35 U.S.C. 102(b) as being anticipated by Kerrigan (U.S. Patent No. 5,404,488, "Kerrigan"). Applicant respectfully disagrees.

Claims 17-23 have been cancelled, and so their rejections are rendered moot. Applicant respectfully submits that there are numerous limitations of claims 24-31 not taught or suggested by Kerrigan.

Claim 24 recites:

24. A method of processing measurement data, the method comprising:

(a) receiving first measurement data of a first data type of a plurality of data types from a first measurement device of a plurality of measurement devices;

(b) storing the received measurement data in a shared memory location;

(c) appending one or more bits to a first header record wherein the header record comprises a series of bits, wherein each bit in the series of bits represents a section of the stored measurement data in the shared memory location;

(d) retrieving at least a subset of the stored measurement data from the shared memory location substantially concurrently with the measurement data being stored in the shared memory location;

repeating (a) - (d) for second and subsequent measurement data wherein a second header record is created when the first header record reaches a user specified number of bits and subsequent header records are created when the second header record reaches the user specified number of bits.

In asserting the Kerrigan teaches "retrieving at least a subset of the stored measurement data from the shared memory location substantially concurrently with the measurement data being stored in the shared memory location", the Office Action cites col. 4:24-34. However, the cited text actually reads:

> Referring to FIG. 1, a realtime system 10 comprises one or more feed servers 12(1)-12(n) (referred to generally as feed servers 12), a Realtime Engine (RTE) 14, a feed configuration file 16, one or more instances of an application program 18(1)-18(m), such as Lotus 1-2-3 Release 3.0, and an application programming interface (API) 15, which provides a programming interface between an application and RTE 14. Each of these components is a separate process running on a user's PC which, in the described embodiment, employs an OS/2 operating system.

Applicant respectfully submits that the cited text nowhere discloses this feature of claim 24. While Kerrigan does disclose that "The RTE process is a single OS/2 process composed of a total of ten threads or paths of execution that run concurrently. There is a main thread, a thread for a RTE private pipe, seven threads for seven possible feed server pipes, and an updater thread" (col. 22:6-10), Applicant notes that such concurrent execution of these threads does not specify or indicate that data are retrieved from the shared memory location substantially concurrently with the data being stored in the shared memory location.

Thus, Kerrigan does not disclose this feature of claim 24.

In asserting that Kerrigan teaches "repeating (a) - (d) for second and subsequent measurement data wherein a second header record is created when the first header record reaches a user specified number of bits and subsequent header records are created when the second header record reaches the user specified number of bits", the Office Action cites col. 1:56-68, which reads:

> Preferred embodiments include the following features. The realtime engine includes means for identifying a subset of the associated group of items for the selected data feed for which the application desires data. The subset identifies the members of the associated group for which the caching means caches the most recent data values. Also, the realtime engine includes means for determining which of the cached data values are different from data values for corresponding items last sent to the application. The sending means sends only those cached data values which

are determined to be different. In addition, the realtime engine includes means for storing copies of the data values last sent to the application. The determining means compares contents of the storing means with contents of the caching means to determine which data values are different from those last sent to the application.

Clearly, the cited passage does not disclose this feature. In fact, nowhere does Kerrigan even hint at creating header records in the manner claimed.

Thus, for at least the reasons provided above, Applicant respectfully submits that Kerrigan fails to teach or suggest all the features and limitations of claim 24, and so claim 24 and those claims dependent therefrom are patentably distinct and non-obvious over Kerrigan, and are thus allowable.

Removal of the section 102 rejection of claim 24-31 is respectfully requested.

Section 103 Rejections

Claims 1-31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kerrigan in view of Greenfield (U.S. Patent No. 6,684,207, "Greenfield"). Applicant respectfully disagrees.

Claims 4 and 17-23 have been cancelled, and so their rejections are rendered moot. Applicant respectfully submits that there are numerous limitations of claims 1-3, 5-16 and 24-31 not taught or suggested by Kerrigan and Greenfield.

Applicant notes that to establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. Obviousness cannot be established by combining or modifying the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive to do so. In re Bond, 910 F. 2d 81, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

Moreover, as held by the U.S. Court of Appeals for the Federal Circuit in Ecolochem Inc. v. Southern California Edison Co., an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings "must be clear and particular . . .. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence'." *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

Amended claim 1 recites:

1. A method of logging and trending real time measurement data, the method comprising:

a logger application executing on a first computer system receiving a measurement stream comprising a plurality of real time data values;

the logger application writing portions of the plurality of real time data values to respective shared memory sections of a memory in the first computer system in a modular fashion;

wherein each of the portions of the plurality of real time data values in each of the respective shared memory sections is independently accessible by a trender application executing in a second computer system;

initiating the trender application on the second computer system;

the trender application generating a query request for a first portion of the plurality of real time data values;

the first computer system sending a single message to the second computer system, wherein the single message comprises the first portion of the plurality of real time data values;

the trender application receiving the single message comprising the first portion of the plurality of real time data values;

the trender application displaying the first portion of the plurality of real time data values.

Applicant notes that Kerrigan's RTE is a single process that operates to both store and retrieve data, whereas claim 1 describes two separate applications (the logger and the trender) executing on respective computer systems operating conjunctively to store and retrieve real time measurement data.

The Office Action admits that Kerrigan fails to teach a trender application executing on a second computer system (where a logger application executes on a first computer system), but then asserts that Greenfield remedies this admitted deficiency of Kerrigan, citing Figure 1: 101, and col. 7:56-65, which reads:

> The OLAP API 103 is the programming interface for OLAP services. When the OLAP application 101 calls methods on OLAP API 103 classes, the OLAP application 101 uses client software of the OLAP API 103 to communicate with an OLAP service 105, which typically resides on a different platform. The OLAP service module 105 and the relation database management system 109 reside on a data server tier, where the data is stored, selected, and manipulated. Specifically, the OLAP service 105 is a child process of an instance of the relational database system 109, and the communication between the OLAP API 103 client software and the OLAP service 105 is provided through a protocol such as the Common Object Request Broker Architecture (CORBA).

Applicant respectfully disagrees, noting that Greenfield is directed to "an object-oriented query representation, deployment of an OLAP data server apart from the OLAP application, and a multidimensional virtual cursor" (col. 2:44-47). Applicant further notes that Greenfield is specifically directed to online analysis (and retrieval) of business data, e.g., sales, transactions, and other affairs (Background, col. 1:20) from a data warehouse, i.e., a relational database, and nowhere even mentions real time measurement data at all. Applicant submits that business data are not measurement data, as is well known to those skilled in the art of measurement and testing, and moreover, that the business data disclosed by Greenfield are clearly not streamed real time data.

Rather, as Greenfield makes clear, the cited reference is concerned with techniques for constructing (object-oriented) queries where "The query objects resemble the business model of the OLAP application rather than the relational database model of the data warehouse" (col. 2:51-53), and where translation from the business model based queries to data warehouse queries is performed by data servers, as opposed to the querying application.

Applicant further submits that the cited references provide no proper motivation to combine. For example, Applicant notes that Kerrigan is directed to updating applications, e.g., spreadsheets, with realtime data feeds, e.g., of financial data, while Greenfield is directed to an object-oriented query representation, deployment of an OLAP data server apart from the OLAP application, and a multidimensional virtual cursor, as mentioned above. Nowhere does Greenfield indicate the desirability of storing and retrieving real time data, and more specifically, real time measurement data, especially in the manner claimed. Nor does Kerrigan indicate or even hint at the desirability of distributing such storing and retrieving real time data over multiple computer systems. Nowhere does either reference teach or suggest, or even mention, real time measurement data.

The Examiner's suggested motivation to combine: "to allow applications on remote systems to gain access to the real-time information measurement streams to perform remote analytical processing on the data in the database", is improper, at least for the reason that neither reference even mentions "real time information measurement streams" at all. Applicant submits that the Examiner has simply cited an improved result of such an alleged combination, which is no more than hindsight, since there is no initial suggestion to make the combination in the references themselves.

Additionally, even were Kerrigan and Greenfield properly combinable, which Applicant argues they are not, the resulting combination would still not produce Applicant's invention as claimed, as argued at length above.

Thus, for at least the reasons provided above, Applicant submits that claim 1 and those claims dependent therefrom are patentably distinct and non-obvious over Kerrigan and Greenfield, taken singly or in combination, and are thus allowable.

Claim 11 includes many of the novel limitations of claim 1, and so the above arguments apply with equal force to these claims. Thus, for at least the reasons provided above, Applicant submits that claim 11 and those claims dependent therefrom are patentably distinct and non-obvious over Kerrigan and Greenfield, taken singly or in combination, and are thus allowable.

Applicant submits that since independent claim 24 has been shown above to be allowable, claims 25-31, dependent from claim 24, are similarly allowable.

Applicant respectfully requests removal of the section 103 rejection of claims 1-3, 5-16, and 24-31.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-57700/JCH.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

Respectfully submitted,

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